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United States Department of Energy, Western Area Power  
Administration Amistad and Falcon Projects

Docket No. EF99-5101-000

FEDERAL ENERGY REGULATORY COMMISSION - OFFICE DIRECTOR

90 F.E.R.C. P62,042; 2000 FERC LEXIS 94

ORDER CONFIRMING AND APPROVING RATE SCHEDULE ON A FINAL  
BASIS

January 21, 2000

CORE TERMS: repayment, energy, delegated, formula, confirmation, generating, customers, repaid, annual, standard of review, authority granted, compound interest, hydroelectric, amortization, regulations, estimated, interim, confirm, approve, output, lowest

OPINION:

[\*1] Summary:

On May 3, 1999, the Secretary of Energy (Secretary) requested final confirmation and approval of Western Area Power Administration's (WAPA) extension of the formula rate contained in Contract No. 7-07-50-P0890 (Contract), applicable to the sale of power and energy from the Amistad and Falcon Projects. n1 The Secretary placed the rate schedule into effect on an interim basis effective June 8, 1999, n2 and requests final confirmation and approval of the rate for the period June 8, 1999, through June 7, 2004.

-Footnotes-

n1 The Amistad and Falcon Projects are two multipurpose hydroelectric projects whose power output is sold to preference customers in Texas.

n2 Rate Order No. WAPA-85 was issued on April 29, 1999, under authority granted in Section 2 of Department of Energy Delegation Order No. 0204-108 (Delegation Order), as amended November 10, 1993 (58 Fed. Reg. 59,716). By Order dated April 15, 1999, the Secretary rescinded all authority granted in the Delegation Order which was delegated to the Deputy Secretary of Energy.

-End Footnotes-

[\*2]

The charges for fiscal year 1999, calculated pursuant to the formula contained in the Contract, are estimated to be \$ 3,432,859. This amounts to a charge of about 20.8 mills per kWh based on an estimated annual generation of 165 million kWh for these two hydroelectric projects. Under the Contract, fixed monthly charges are assessed regardless of the amounts of power and energy made available. n3

-Footnotes-

n3 The rate extension supersedes the present rate, which was approved on a final basis in Docket No. EF93-5101-000, 64 FERC P 62,225 (1993), for the

period June 8, 1993, through June 7, 1998. By Rate Order No. WAPA-81, the Deputy Secretary of Energy extended the rate through June 7, 1999.

- - - - -End Footnotes- - - - -

Notice of the application was published in the Federal Register with comments, protests, or motions to intervene due on or before May 28, 1999. n4 No responses were received.

- - - - -Footnotes- - - - -

n4 64 Fed. Reg. 26,400 (1999).

- - - - -End Footnotes- - - - -

[\*3]

Standard of Review:

The Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (1977), grants the Secretary authority to approve WAPA's rates on both an interim and final basis. n5 The Secretary, in turn, delegated the authority to confirm and approve WAPA's rates on a final basis to the Commission. n6 The Delegation Order establishes the standard and scope for Commission review of WAPA's rates. The scope of Commission review is limited to:

- . whether the rates are the lowest possible to customers consistent with sound business principles;
- . whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting the electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and
- . the assumptions and projections used in developing the rate components that are subject to Commission review. n7

- - - - -Footnotes- - - - -

n5 42 U.S.C. @ 7152.

n6 Section 3 of the Delegation Order.

n7 Id.

- - - - -End Footnotes- - - - -

[\*4]

The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies. n8 The Commission may reject the rate determinations of WAPA's Administrator only if it finds them to be arbitrary, capricious, or in violation of the law, if they violate Department of Energy regulations (e.g., Order No. RA 6120.2 which prescribes WAPA's financial reporting policies, procedures, and methodologies), or if they violate agreements between the Administrator and the applicable power generating agency. The Commission considers its role as that of an appellate body which reviews the record developed by the Administrator. In other words, the Commission does not develop a record on its own.

Consequently, the Commission only affirms or remands the rates submitted to it for final review. n9

-Footnotes-

n8 The power generating agencies include the Bureau of Reclamation, the Army Corps of Engineers, and the International Boundary and Water Commission. These agencies build and operate various projects. The Power Marketing Administrations market the output of the projects. [\*5]

n9 See, e.g., U.S. Department of Energy - Western Area Power Administration (Boulder Canyon Project), 61 FERC P 61,229 at 61,844 (1992), aff'd in relevant respects, Overton Power District No. 5, et. al. v. Watkins, et. al., 829 F. Supp. 1523, (D. Nevada 1993), vacated and remanded with directions to dismiss, Overton Power District No. 5, et. al. v. O'Leary et. al., 73 F.3d 253 (9th Cir. 1996); U.S. Department of Energy - Western Area Power Administration (Salt Lake City Area Integrated Projects), 59 FERC P 61,058 at 61,240-41 & nn. 17, 20, reh'g denied, 60 FERC P 61,002 (1992); U.S. Secretary of Energy, Bonneville Power Administration, 13 FERC P 61,157 at 61,338 (1980).

-End Footnotes-

Discussion:

The terms of the Contract provide that all excess power and energy generated by the Falcon-Amistad System is sold to South Texas Electric Cooperative, Inc. and Medina Electric Cooperative, Inc. Under the formula, these entities pay the following, regardless [\*6] of the amounts of energy and power made available:

- 1) the amount necessary to amortize the remaining investment costs of the power facilities at Falcon and Amistad over the remaining repayment periods; and
- 2) the projects' annual operation, maintenance, and replacement costs, and the administrative costs of the International Boundary and Water Commission and WAPA.

By statute, n10 WAPA must repay the Federal investment from power revenues within a reasonable period of time, which as a general practice is 50 years. While the statute only requires that the Federal investment be repaid sometime within the repayment period, some reasonable intermediate level of repayment should exist to ensure that repayment will occur by the end of the fiftieth year. We, therefore, compared the actual investment repayment to date with a benchmark level of repayment based upon a compound interest (home mortgage type) amortization schedule. WAPA's Federal investment as of September 30, 1998, was \$ 45 million. WAPA had repaid \$ 10 million (22%) of the Federal investment, compared with \$ 9 million (20%) under the compound interest amortization schedule. This indicates that WAPA's past rates have been sufficient [\*7] to recover a reasonable portion of the Federal investment. Consequently, the remaining power investment to be repaid from future rates is not unreasonable when compared to the remaining repayment period.

-Footnotes-

n10 Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. @ 485h(c).

-End Footnotes-

Our review of WAPA's power repayment study (PRS) indicates that the revenues collected under the proposed rate will be sufficient to recover WAPA's costs and the remaining Federal investment. Our review also indicates that the PRS was prepared in a manner consistent with Order No. RA 6120.2 which requires that WAPA's system financial statements be prepared in accordance with generally accepted accounting principles, as appropriate, and that its repayment analyses be prepared using sound forecasting techniques designed to approximate as closely as possible actual results. Finally, since the revenues generated by the proposed rate recover no more than WAPA's annual costs and the remaining Federal investment, [\*8] the rate is the lowest possible to customers.

Since WAPA's rate is consistent with the standard of review delegated to the Commission by the Secretary, the rate merits final confirmation and approval.

The Director:

Confirms and approves on a final basis an extension of the formula rate contained in the Contract for the period June 8, 1999, through June 7, 2004.

Authorities:

Authority to act on this matter is delegated to the Director, Division of Rate Applications, pursuant to 18 C.F.R. 375.308.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. 385.713.

Donald J. Gelinas, Director

Division of Rate Applications